

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of:)	
)	CSR-6688-E
)	CSR-6689-E
Charter Communications)	CSR-6690-E
)	CSR-6691-E
)	CSR-6692-E
Nine Petitions for Determination of Effective)	CSR-6693-E
Competition in Twenty-Five Local Franchise)	CSR-6694-E
Areas in Michigan)	CSR-6695-E
)	CSR-6696-E

MEMORANDUM OPINION AND ORDER

Adopted: June 30, 2005

Released: July 1, 2005

By the Deputy Chief, Policy Division, Media Bureau:

I. INTRODUCTION

1. This Order considers nine petitions filed with the Commission by Charter Communications, on behalf of its affiliates, (“Charter”) pursuant to Sections 76.7, 76.905(b)(1) & (2) and 76.907 of the Commission’s rules for a determination that Charter’s cable systems serving twenty-five Michigan communities (the “Communities”) are subject to effective competition pursuant to Section 623(a)(1) of the Communications Act of 1934, as amended (“Communications Act”) and are therefore exempt from cable rate regulation.¹ The Communities are listed in Attachment A. No opposition to any petition was filed. We grant the petitions finding that the Charter cable systems are subject to effective competition in the listed Communities.

2. In the absence of a demonstration to the contrary, cable systems are presumed not to be subject to effective competition,² as that term is defined by Section 623(1) of the Communications Act, and Section 76.905 of the Commission's rules.³ The cable operator bears the burden of rebutting the presumption that effective competition does not exist with evidence that effective competition is present within the relevant franchise area.⁴

II. DISCUSSION

A. Competing Provider Effective Competition

3. Section 623(l)(1)(B) of the Communications Act provides that a cable operator is subject to effective competition if its franchise area is (a) served by at least two unaffiliated multi-channel video programming distributors ("MVPD") each of which offers comparable video programming to at

¹ 47 C.F.R. §§ 76.7, 76.905(b)(1)& (2), 76.907; 47 U.S.C. § 543(a)(1).

² 47 C.F.R. § 76.906.

³ 47 C.F.R. § 76.905.

⁴ See 47 C.F.R. §§ 76.906 & 907.

least 50 percent of the households in the franchise area; and (b) the number of households subscribing to programming services offered by MVPDs other than the largest MVPD exceeds fifteen percent of the households in the franchise area.⁵ Turning to the first prong of this test, the DBS service of DirecTV, Inc. (“DirecTV”) and DISH Network (“DISH”) is presumed to be technically available due to its nationwide satellite footprint, and presumed to be actually available if households in a franchise area are made reasonably aware that the service is available.⁶ The two DBS providers’ subscriber growth reached approximately 23.16 million as of June 30, 2004, comprising approximately 23 percent of all MVPD subscribers nationwide; DirecTV has become the second largest, and DISH the fourth largest, MVPD provider.⁷ In view of this DBS growth data, and the data discussed below showing that more than 15 percent of the households in each of the communities listed on Attachment A are DBS subscribers, we conclude that the population of communities at issue here may be deemed reasonably aware of the availability of DBS services for purposes of the first prong of the competing provider test. With respect to the issue of program comparability, we find that the programming of the DBS providers satisfies the Commission’s program comparability criterion because the DBS providers offer substantially more than 12 channels of video programming, including more than one non-broadcast channel.⁸ We further find that the Charter cable systems have demonstrated that the Communities are served by at least two unaffiliated MVPDs, namely the two DBS providers, each of which offers comparable video programming to at least 50 percent of the households in the franchise area.⁹ Charter has also demonstrated that the two DBS providers are physically able to offer MVPD service to subscribers in the Communities, that there exists no regulatory, technical, or other impediments to households within the Communities taking the services of DBS providers, and that potential subscribers in the Communities have been made reasonably aware of the MVPD services of DirecTV and DISH.¹⁰ Therefore, the first prong of the competing provider test is satisfied.

4. The second prong of the competing provider test requires that the number of households subscribing to MVPDs, other than the largest MVPD, exceed 15 percent of the households in a franchise area. Charter sought to determine the competing provider penetration in the Communities by purchasing a subscriber tracking report from the Satellite Broadcasting and Communications Association (“SCBA”) that identified the number of subscribers attributable to the DBS providers within the Communities on a zip code basis.¹¹ Charter asserts that it is the largest MVPD in the majority of the Communities because its subscribership exceeds the aggregate DBS subscribership for those franchise areas.¹² With respect to

⁵ 47 U.S.C. § 543(1)(1)(B); *see also* 47 C.F.R. § 76.905(b)(2).

⁶ *See MediaOne of Georgia*, 12 FCC Rcd 19406 (1997).

⁷ *Eleventh Annual Assessment of the Status of Competition in the Market for Delivery of Video Programming*, FCC 05-13, at ¶¶ 54-55 (rel. Feb. 4, 2005).

⁸ *See* 47 C.F.R. § 76.905(g).

⁹ Charter Petitions at 5 and Exhibit 2.

¹⁰ *Id.* at 4 and Exhibit 1.

¹¹ *Id.* at 6-7. Charter acknowledges that a standard five-digit zip code in certain cases may not coincide precisely with the boundaries of a cable operator’s franchise area. To overcome this potential problem, Charter has applied a competitive penetration methodology. The Commission has approved this methodology for determining DBS subscribership. *See, e.g., In re Petition for Determination of Effective Competition in San Luis Obispo County, California*, 17 FCC Rcd 4617 (2002); *Fibervision, Inc. Petition for Determination of Effective Competition in Laurel, MT and Park City, MT*, 17 FCC Rcd 16313 (2002).

¹² Charter Petitions at 6. *See also* Declaration of Denise Jones-Williams, Director of Regulatory Compliance for Charter Communications (March 4, 2005) re: CSR-6688-E through CSR-6693-E in which Ms. Jones-Williams states that Charter is the largest MVPD in each of the relevant franchise areas. In the Declaration of Ms. Jones-Williams (March 24, 2005) re: CSR 6694-E through CSR-6696-E, Ms. Jones-Williams states that Charter is the largest

(continued...)

Paradise Township, Charter asserts that the respective aggregate allocated DBS subscriber figure (486) is slightly larger than Charter's subscriber count (369) in that Community. However, Charter contends that because there are two major DBS providers in the Community, it is likely that Charter is still the largest individual MVPD in these franchise area.¹³

5. Based upon the aggregate DBS subscriber penetration levels as reflected in Attachment A, calculated using 2000 Census household data, we find that Charter has demonstrated that the number of households subscribing to programming services offered by MVPDs, other than the largest MVPD, exceeds 15 percent of the households in those noted Communities. With regard to Paradise Township, we are able to conclude that this portion of the test is met by analyzing the data submitted for both Charter and the DBS providers. If the subscriber penetration for both Charter and the aggregate DBS information each exceed 15 percent in the franchise area, the second prong of the competing provider test is satisfied.¹⁴ In Paradise Township, the combined DBS penetration rate is 35.4 percent and Charter's penetration rate is 26.8 percent.¹⁵ Therefore, the second prong of the competing provider test is satisfied. Based on the foregoing, we conclude that Charter has submitted sufficient evidence demonstrating that their cable systems serving the Communities set forth on Attachment A are subject to competing provider effective competition.

B. Low Penetration Effective Competition

6. Section 623(1)(1)(A) of the Communications Act provides that a cable operator is subject to effective competition, and therefore exempt from cable rate regulation, if "fewer than 30 percent of the households in the franchise area subscribe to the cable service of the cable system."¹⁶ Charter asserts that it is subject to effective competition in Paradise Township under the low penetration effective competition test.¹⁷ Charter submitted information listed on Attachment A showing that its penetration rate in the Paradise Township Franchise Area is 26.8 percent. Accordingly, we conclude that Charter has demonstrated the existence of low penetration effective competition under our rules in Paradise Township.

III. ORDERING CLAUSES

7. Accordingly, **IT IS ORDERED** that the petitions filed by Charter Communications for a determination of effective competition in the Communities listed on Attachment A **ARE GRANTED**.

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MVPD in 18 of the 19 relevant franchise areas. In the Paradise Franchise Area, Ms. Jones-Williams states that it is likely that Charter is the largest MVPD.

¹³ Charter Petitions at n.16. *See also* Declaration of Denise Jones-Williams, Director of Regulatory Compliance for Charter Communications (March 24, 2005).

¹⁴ *See Time Warner Entertainment Advance/Newhouse Partnership, et al.*, 17 FCC Rcd 23587, 23589 (MB 2002).

¹⁵ $486 \text{ DBS subscribers} \div 1,374 \text{ Paradise Township 2000 Census Households} = 35.4\%$; $369 \text{ Charter subscribers} \div 1,374 \text{ Paradise Township 2000 Census Households} = 26.8\%$.

¹⁶ 47 U.S.C. § 543(1)(1)(A).

¹⁷ Charter Petitions at 8. *See also* Declaration of Denise Jones-Williams, Director of Regulatory Compliance for Charter Communications (March 18, 2005).

8. **IT IS FURTHER ORDERED** that the certifications to regulate basic cable service rates granted to any of the local franchising authorities overseeing Charter Communications in the affected Communities **ARE REVOKED**.

9. This action is taken pursuant to delegated authority pursuant to Section 0.283 of the Commission's rules.¹⁸

FEDERAL COMMUNICATIONS COMMISSION

Steven A. Broeckaert
Deputy Chief, Policy Division
Media Bureau

¹⁸ 47 C.F.R. § 0.283.

Attachment A

Charter Cable Systems Subject to Competing Provider Effective Competition**CSR-6688-E through CSR-6693-E**

Communities	CUIDS	CPR*	2000 Census Households+	DBS Subscribers+
Auburn, City	MI0202	17.9%	842	151
Kawkawlin, Township	MI0201	22.2%	1,910	424
	MI1036			
	MI1046			
Kinross, Township	MI1176	20.0%	1,156	231
Richfield, Township (Genesee County)	MI1446	16.0%	2,967	474
Rosebush, Village	MI1118	40.0%	145	58
Thomas, Township	MI0537	24.1%	4,545	1,097

CSR-6694-E through CSR-6696-E

Bellaire, Village	MI0366	25.8%	489	126
Boyne City, City	MI0047	26.0%	1,468	381
Cadillac, City	MI0032	20.2%	4,118	833
Charlevoix, City	MI0048	25.0%	1,375	344
Charlevoix, Township	MI0264	25.1%	662	166
Cheboygan, City	MI0168	33.0%	2,146	708
Empire, Village	MI0438	24.6%	187	46
Filer, Township	MI0092	16.8%	886	149
Frankfort, City	MI0282	22.1%	665	147
Gaylord, City	MI0050	28.9%	1,584	458
Haring, Township	MI0217	20.2%	1,073	217
Kasson, Township	MI0442	28.5%	557	159
	MI2015			

Kingsley, Village	MI1124	36.5%	501	183
Lake City, City	MI0497	36.7%	381	140
Littlefield, Township (Emmet County)	MI0619 MI0295	35.1%	1,116	392
Manistee, City	MI0051	17.0%	2,912	494
Manton, City	MI0514	45.5%	497	226
McBain, City	MI0810	43.5%	246	107
Paradise, Township	MI1540	35.4%	1,374	486

Charter Systems Subject to Low Penetration Effective Competition

Communities	CUIDS	Franchise Area Households	Cable Subscribers	Penetration Level
Paradise, Township	MI1540	1,374	369	26.8%

CPR = Percent DBS penetration

+ = See Charter Petitions